REMARKS

The following issues are outstanding in the present application:

- Claim 22 is rejected under 35 U.S.C. 112, second paragraph;
- Claims 1, 2, 3, 13, 15-18, 20, 21, and 23 are rejected under 35 U.S.C. 102(b);
- Claims 1, 2, 11, 13-15, 17, 19, 20 and 21 are rejected under 35 U.S.C. 102(b);
- Claims 1, 9, 10 and 12 are rejected under 35 U.S.C. 102(b);
- Claim 24 is rejected under 35 U.S.C. 103(a);
- Claims 6 is rejected under 35 U.S.C. 103(a);
- Claim 3-5 are rejected under 35 U.S.C. 103(a);
- Claims 7 and 8 are rejected under 35 U.S.C. 103(a); and
- Nonstatutory double patenting rejection.

Claim Amendments

Independent claims 1 and 20 have been amended to recite that the food materials comprise at least a food material selected from a group consisting of pasta, rice and grain products. Support for this amendment is found in paragraph 0012, 0013, 0044, and Examples 12-17 of the specification. Claims 16 and 21 have been amended in order to more clearly define the subject invention. Claim 22 has been amended to overcome the Section 112, second paragraph rejection. Claims 15, 23 and 24 have been cancelled and new claims 25-28 have been added. No new matter has been added.

35 U.S.C. 112

Claim 22 has been rejected under 35 U.S.C. 112, second paragraph because there is insufficient antecedent basis for the limitation "sauce." Claim 22 has been amended in order to remove this rejection.

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35 U.S.C. 102(b)

Claims 1, 2, 3, 13, 15-18, 20, 21, and 23 have been rejected under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 3,615,690 to Pratl. Applicant respectfully traverses this rejection.

Pratl is directed to a method of preparing a meat product that resembles a summer sausage product that is sliceable and upon heating, breaks up into a flowable and spreadable body. The ingredients listed in the Pratl reference include beef, pork, cheese and seasonings and flavorings.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that nowhere does the Pratl reference teach or disclose a method of preparing gelled food products in which the food product includes at least a food material selected from a group consisting of pasta, rice and grain products. The Pratl reference teaches only the use of meat and cheese materials in the food product. Therefore, Applicant respectfully asserts that since Pratl fails to teach or suggest each and every limitation of the presently amended independent claims 1 and 20, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 2, 3, 13, 15-18, 21, and 23 depend at least in part on amended independent claim 1 or 20, they by definition are not anticipated by the Pratl reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 2, 3, 13, 15-18, 20, 21, and 23 under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 3,615,690 to Pratl.

35 U.S.C. 102(b)

Claims 1, 2, 11, 13, 14, 15, 17, 19, 20, and 21 have been rejected under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 4,196,219 to Shaw. Applicant respectfully traverses this rejection.

Shaw is directed to a method of extending the storage life of frozen precooked foods by dipping the precooked foods in a coating composition of the calcium salt of carrageenan,

freezing the precooked food and storing the food in the frozen state. The Shaw reference lists only precooked foods such as meat, poultry or fish products as being suitable for coating.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that nowhere does the Shaw reference teach or disclose a method of preparing gelled food products in which the food product includes at least a food material selected from a group consisting of pasta, rice and grain products. The Shaw references teaches only precooked foods such as meat, poultry or fish products as being suitable for coating in a gell solution. Therefore, Applicant respectfully asserts that since Shaw fails to teach or suggest each and every limitation of the presently amended independent claims 1 and 20, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 2, 11, 13, 14, 15, 17, 19 and 21 depend at least in part on amended independent claim 1 and 20, they by definition are not anticipated by the Shaw reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 2, 11, 13, 14, 15, 17, 19, 20, and 21 under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 4,196,219 to Shaw.

35 U.S.C. 102(b)

Claims 1, 9, 10 and 12 have been rejected under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent 3,395,024 to Earle as evidenced by Leblang, online article publication. Applicant respectfully traverses this rejection.

Earle is directed to a method of preserving foods by first immersing the prepared food product in an aqueous alginate dispersion containing a carbohydrate comprising at least one sugar and allowing the excess dispersion to drain therefrom, dipping the food product again with an aqueous gelling solution containing calcium ions which is required to gel the alginate coating and allowing the excess dispersion to drain therefrom. The Earle reference only lists foods such as meat, seafood and poultry as food products that can be preserved by coating.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully

submits that nowhere does the Earle reference teach or disclose a method for preparing gelled food products that includes preparing food materials and ingredients to form a food product in which the food materials comprises at least a food material selected from a group consisting of pasta, rice and grain products recited in amended independent claim 1. Therefore, Applicant respectfully asserts that since Earle fails to teach or suggest each and every limitation of the presently amended independent claim 1, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 9, 10 and 12 depend at least in part on amended independent claim 1, they by definition are not anticipated by the Earle reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 9, 10 and 12 under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent 3,395,024 to Earle as evidenced by Leblang, online article publication.

35 U.S.C. 103(a)

Claim 24 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Pratl as applied to claims 1, 2, 3, 13, 15-18, 20, 21, and 23 above. Since claim 24 has been cancelled, this rejection is now moot.

35 U.S.C. 103(a)

Claim 6 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Pratl as applied to claims 1, 2, 3, 13, 15-18, 20, 21, and 23 above, and further in view of Shaw. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Pratl obviates the present rejection. The Shaw reference adds no new teaching to the Pratl reference that would result in the inventive method of claim 1. Claim 6 depends from claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of its dependency from claim 1, claim 6 is nonobvioius over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over Pratl as applied to claims 1, 2, 3, 13, 15-18, 20, 21, and 23 above, and further in view of Shaw.

35 U.S.C. 103(a)

Claims 3-5 have been rejected under 35 U.S.C. 103(a) as having subject matter unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,308,636 to Tye. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Shaw obviates the present rejection. The Tye reference is directed to increasing the viscosity of gellable starch-based systems by admixing a glucomannan such as konjac to the starch. The konjac is added to ingredients during the preparation of a food product. The Tye reference lists batter mix, sauces and glazes, pudding, soup, potato snacks, and pasta as food products that can be made with the disclosed gellable starch-based systems. Thus, the Tye reference adds no new teaching to the Shaw reference that would result in the inventive method of claim 1. Claims 3-5 depend from claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 3-5 are nonobvioius over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 4-5 under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,308,636 to Tye.

35 U.S.C. 103(a)

Claims 7 and 8 have been rejected under 35 U.S.C. 103(a) as having subject matter unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,314,705 to Hansson. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Shaw obviates the present rejection. The Hansson reference is directed to a process for preparing a frozen meal containing meat pieces, potatoes and vegetables. There is no teaching in the Hansson reference of adding pasta, rice or grain products to the frozen meal. Thus, Hansson adds no new teachings to the Shaw reference that

would result in the inventive method of claim 1. Claims 7 and 8 depend from claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 7 and 8 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21 and 23 above and further in view of n view of U.S. Patent No. 5,314,705 to Hansson.

Terminal Disclaimer

Claims 1, 2, 12, 13, 15, 16, 20 and 23 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6, 7, 10, 12, 13, 15, 16, 33, 35, 36, 38, 41, 44, 46, and 61 of copending Application No. 10/373,122. Enclosed with this response is a terminal disclaimer over Application No. 10/373,122 which is commonly owned. This terminal disclaimer removes the provisional double patenting rejection.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no other fee is due with this response. However, if other fees are due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02734US1 from which the undersigned is authorized to draw.

Dated: 3-23-05

Respectfully submitted,

By _____

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